

3521.123D

1

PATENT



16179 U.S. PTO

Case Docket No. 3521.123D (ALJ)

Anticipated Classification of this application:

Class _____ Subclass _____

Prior Application:

Examiner: Gregory M. Desire

Art Unit: 2625

**MAIL STOP PATENT APPLICATION
COMMISSIONER FOR PATENTS
P.O. BOX 1450
Alexandria, VA 22313-1450**



TRANSMITTAL OF FILING UNDER 37 CFR 1.53(b)

CERTIFICATE OF MAILING

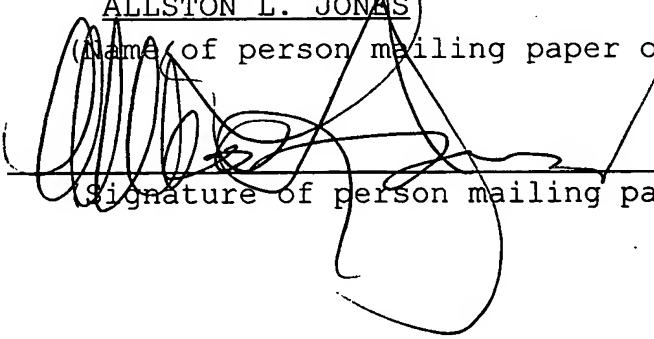
Express Mail mailing label number EV397172931US

Date of Deposit January 14, 2004

I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to MAIL STOP PATENT APPLICATION, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

ALLSTON L. JONES

(Name of person mailing paper or fee)



(Signature of person mailing paper or fee)

Sir:

This is a request for filing an application under 37 C.F.R. 1.53 (b):

[] Continuation
[X] Divisional

of pending prior Application Serial No. 09/547,559,
filed on April 12, 2000

of WEIJIAN WANG

(Inventor(s))

for METHOD AND APPARATUS FOR DETERMINING BEST FOCUS USING DARK-FIELD IMAGING

(Title of Invention)

1. ☒ A copy of the prior application is attached.
- ☒ I hereby verify that these attached papers are a true copy of what is shown in my records to be the above identified prior application, including the oath or declaration originally filed in the prior application (37 CFR 1.53).

The copy of the papers of prior application as filed which are as follows:

- ☒ 11 page(s) of specification
☒ 9 page(s) of claims
☒ 1 page(s) of abstract
☒ 3 sheets(s) of drawings
☒ 4 pages of declaration of power of attorney

The following (indented) section is used when the declaration being filed does not have the applicant's signature thereon.

☐ In accordance with the indication required by 37 CFR 1.53(b) my records reflect that the original signed declaration showing applicant's signature was filed on _____ (copy enclosed).

☐ _____ the amendment referred to in the declaration filed to complete the prior application and I hereby state, in accordance with the requirements of 37 CFR 1.53(b), that this amendment did not introduce new matter therein.

2. Amendments

☒ Cancel in this application original claims 11-22 of the prior application before calculating the filing fee. (At least one original independent claim must be retained for filing purposes.)

☐ A preliminary amendment is enclosed. (Claims added by this amendment have been properly numbered consecutively beginning with the number next following the highest number original claim in the prior application.)

3. Petition for Suspension of Prosecution for the Time Necessary to File an Amendment

(Note: Where it is possible that the claims on file will give rise to a first action final for this continuation application and for some reason an amendment cannot be filed promptly (e.g., experimental data is being gathered) it may be desirable to file a petition for suspension of prosecution for the time

necessary.)

[] There is provided herewith to Suspend Prosecution for The Time Necessary to File An Amendment (New Application Filed Concurrently).

4. Information Disclosure Statement

[X] An Information disclosure statement is submitted herewith.

5. Fee Calculation (37 CFR 1.16)

FILING FEE CALCULATION - CLAIMS AS FILED					(5) BASIC FEE	
(1) FOR		(2) NUMBER FILED	(3) NUMBER EXTRA	(4) RATE	SMALL	OTHER
					\$385.00	
TOTAL CLAIMS	SMALL ENTITY	18- 20 =	0	\$9.00	\$0.00	
	OTHER	- 20 =				
INDEP. CLAIMS	SMALL ENTITY	3- 3 =	0	\$43.00	\$0.00	
	OTHER	- 3 =				
			TOTAL FILING FEE →		\$385.00	

[] Fee for extra claims is not being paid at this time.
(37 CFR 1.16(d))

NOTE: If the fees for extra claims are not paid on filing, they must be paid or the claims canceled by amendment, prior to the expiration of the time period set for response by the PTO in any notice of fee deficiency. 37 CFR 1.16 (d).

6. Small Entity Status

[X] Small Entity Status has been established in the parent application and such status is still proper and desired (37 CFR 1.28(a))

7. Drawings

WARNING: DO NOT CHECK THE FOLLOWING BOX IF PRIOR CASE IS NOT TO BE ABANDONED.

[] Transfer the drawings from the prior application to this application and, subject to item 17 below, abandon said prior application as of the filing date accorded this application. A duplicate copy of this request is enclosed for filing in the prior application file. (May only be used if signed by (1) applicant, (2) assignee of record or (3) attorney or agent of record authorized by 37 CFR 1.138 and before

payment of issue fee.)

NOTE: "A registered attorney or agent acting under the provisions of § 1.34 (a), or of record, may also expressly abandon a prior application as of the filing date granted to a continuing application when filing such a continuing application." 37 CFR 1.138.

[] Transfer the following sheet(s) of drawing from the prior application to this application_____

NOTE: Transferred sheets must be canceled in prior application. 37 CFR 1.88

[] A copy of the amendment canceling these sheets of drawings in the prior application is attached.

[] New drawings are enclosed

[] formal (Figs._____)

[] informal (Figs._____)

8. Priority - 35 U.S.C. 119

[] Priority of application serial no. 0 / _____ filed on _____ is claimed under 35 U.S.C. 119.

[] The certified copy has been filed in prior U.S. application serial no. 0 / _____ on _____ .

[] The certified copy will follow.

9. Relate Back - 35 U.S.C. 120

[X] Amend the specification by inserting before the first line the sentence:

--This is a [] continuation [X] divisional of copending application(s),

[X] Serial No. 09/547,559 , filed on April 12, 2000.

[] International Application _____ filed on _____ and which designated the U.S.--

NOTE: The prior reference to a prior filed PCT application which entered the U.S. national phase is the U.S. serial number and the filing date of the PCT application which designated the U.S.

10. Inventorship Statement

NOTE: If the continuation or divisional application is filed by less than all the inventors named in the prior application, a statement must accompany the application when filed requesting deletion of the names of the person(s) who are not inventors of the invention being claimed in the continuation or divisional application. 37 CFR 1.60 (b)

(a) With respect to the prior copending U.S. application from which this application claims benefit under 35 USC 120, the inventor(s) in this application is (are):

☒ the same

☐ less than those named in the prior application and it is requested that the following inventor(s) identified above for the prior application be deleted:

(type name (s) of inventor (s) to be deleted)

(b) The inventorship for all the claims in this application are

☒ the same

☐ not the same, and an explanation, including the ownership of the various claims at the time the last claimed invention was made, is submitted.

11. Assignment

☒ The prior application is assigned to ULTRATECH STEPPER, INC.

☐ An assignment of the invention to _____ is attached. A separate "ASSIGNMENT COVER LETTER ACCOMPANYING NEW PATENT APPLICATION" is also attached.

NOTE: If an assignment is submitted with a new application, send two separate letters - one for the application and one for the assignment.

12. Request that Application Not Be Published Pursuant to 35 U.S.C. 122(b) (2)

☐ Pursuant to 35 U.S.C.122(b) (2), Applicant hereby requests that this patent application not be published pursuant to 35 U.S.C. 122(b) (1). Applicant hereby certifies that the invention disclosed in this application has not and will not be the subject of an application filed in another country, or under a multilateral agreement, that requires publication of applications eighteen months after filing of the application.

Note: An applicant who makes a request not to publish, but who subsequently files in a foreign country, or under a multilateral international agreement specified in 35 U.S.C. 122(b) (2) (B) (i), must notify the Director of such filing not later than forty-five (45) days after the date of the filing of such foreign or international application. A failure of the applicant to provide such notice within the prescribed period shall result in the application being regarded as abandoned, unless it is shown to the satisfaction of the Director that the delay in submitting the notice was unintentional.

13. Fee Payment Being Made At This Time

- ☐ Not enclosed
☐ No filing fee is submitted.

☒ Enclosed

<input checked="" type="checkbox"/> Filing fee	\$ <u>385.00</u>
<input type="checkbox"/> recording assignment (\$40.00; 37 CFR 1.21(h))	\$ _____
<input type="checkbox"/> processing and retention fee (\$130.00; 37 CFR 1.53(d) and 1.21(1))	\$ _____

NOTE: 37 CFR 1.21 (1) establishes a fee for processing and retaining any application which is abandoned for failing to complete the application pursuant to 37 CFR 1.53 (d) and this, as well as the changes to 37 CFR 1.53 and 1.78 indicate that in order to obtain the benefit of a prior U.S. application, either the basic filing fee must be paid or else the processing and retention fee of \$ 1.21 (1) must be paid within 1 year from notification under \$ 53 (d).

Total fees enclosed **\$ 385.00**

14. Method of Payment of Fees

☒ A check in the amount of \$ 385.00 is enclosed.

☒ The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment to Account No.16-1331.

A duplicate copy of this sheet is enclosed.

15. Power of Attorney

☒ The Power of Attorney in the prior application is to

ALLSTON L. JONES

(Attorney)

27,906

(Reg. No.)

1. ☒ The power appears in the original papers in the prior application.

(b) ☐ Since the power does not appear in the original papers, a copy of the power in the prior application is enclosed.

- (c) ☐ A new power has been executed and attached.
- (d) ☒ Address all future communications to:

ALLSTON L. JONES

PETERS, VERNY, JONES & SCHMITT, L.L.P.
385 Sherman Avenue, Suite 6
Palo Alto, CA 94306-1840

16. Maintenance of Copendency of Prior Application

(THIS ITEM MUST BE COMPLETED AND THE PAPERS FILED IN THE PRIOR APPLICATION IF THE PERIOD SET IN THE PRIOR APPLICATION HAS RUN)

- ☐ A petition, fee and response has been filed to extend the term in the pending prior application until _____

NOTE: The PTO finds it useful if a copy of the petition filed in the prior application extending the term for response is filed with the papers constituting the filing of the Continuing Application.

- ☐ a **copy** of the petition for extension of time in the prior application is attached.

17. Conditional Petition for Extension of Time in Prior Application

- ☐ a conditional petition for extension of time is being filed in the pending parent application.

NOTE: The PTO finds it useful if a copy of the petition filed in the prior application extending the term for response is filed with the papers constituting the filing of the Continuing Application.

- ☐ a copy of the conditional petition for extension of time in the prior application is attached.

18. Abandonment of Prior Application (if applicable)

WARNING: (Do not complete this item if the application being filed is a divisional of the prior application which is not being abandoned.)

- ☐ Please abandon the prior application at a time while the prior application is pending or when the petition for extension or to review in that application is granted and when this application is granted a filing date so as to make this application copending with said prior application.

19. Notification in Parent Application of the Filing of this Continuation Application

[] A notification of the filing of this continuation is being filed in the parent application from which this application claims priority under 35 USC § 120.

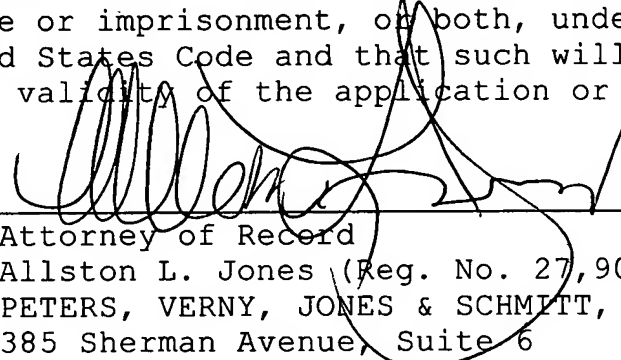
20. Statement by Assignee (if applicable)

[] In accordance with 37 C.F.R. 3.73, I have reviewed the evidentiary documents establishing my/our ownership of the application identified herein, and certify that to the best of my/our knowledge and belief, title is with me/us who seek to take action.

[] Assignment is submitted herewith for recordal.

The undersigned declares further that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date January 14, 2004



Attorney of Record
Allston L. Jones (Reg. No. 27,906)
PETERS, VERNY, JONES & SCHMITT, L.L.P.
385 Sherman Avenue, Suite 6
Palo Alto CA 94306
Telephone No. (650) 324-1677 EXT. 22
FAX No. (650) 324-1678

Atty. Docket No. 3521.123D (ALJ)